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MOSER, PATTERSON & SHERIDAN, LLP  
SARNOFF CORPORATION  
595 SHREWSBURY AVENUE  
SUITE 100  
SHREWSBURY NJ 07702

In re Application of: :  
Robert N. Hurst :  
Application No. 09/430,644 :  
Filed: October 29, 1999 :  
For: FRAME-ACCURATE SEAMLESS SPLICING :  
OF INFORMATION STREAMS :

DECISION  
ON PETITION

This is a decision on the petition filed September 18, 2002 under MPEP 711.03(c)(II), which is being treated pursuant to 37 C.F.R. § 1.181(a), to withdraw the holding of abandonment. No fee is required.

A Notice of Abandonment was mailed August 1, 2002 for failure to timely file a proper reply to the Final Office action mailed August 3, 2001. A shortened statutory period of three (3) months was set for response. No reply or extensions of time were obtained. Therefore, this application became abandoned November 6, 2001.

Petitioner alleges that the Final Office action was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Final Office action on the part of the Patent Office.

The allegation of non-receipt is supported by a statement by the practitioner attesting that the Final Office action was not received and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate Petitioner's claim.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of an Office action as set forth above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED**.

Due to the time lapse between the original mailing of the Office action and this decision, the file is being forwarded to the examiner for updating the prior art search and for further examination as deemed appropriate. From there, the application file will be forwarded to the Technology center's technical support staff for mailing the Office action, the period will be re-set to run from the mailing date thereof. The \$110.00 fee will be credited to applicant's deposit account no. 20-0782.



Allen R. MacDonald, Director  
Technology Center 2600  
Communications